

March 3, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

**Re: CG Docket No. 04-208, National Association of State Utility Consumer
Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-
Billing & Billing Format**

Dear Ms. Dortch:

The undersigned state commissioners respectfully submit these comments in the above-referenced FCC docket.

A. INTRODUCTION

NASUCA's Petition seeks a declaratory ruling by the FCC that communications carriers, wireline, IXC and wireless providers, be prohibited from imposing monthly line-item charges, surcharges, or other fees on customers' bills unless (i) such charges have been expressly mandated or authorized by federal, state, or local action; and (ii) such charges closely match the regulatory assessment they are designed to recover. NASUCA's petition further seeks a ruling that such practices and charges that do not meet these criteria are *per se* unreasonable, unjust, and unlawful, in violation of (i) the FCC Truth-in-Billing (TIB) Order and (ii) Sections 201 and 202 of the Communications Act of 1934.¹

NASUCA's efforts to ensure that consumers have reliable information upon which to make choices among numerous communications services are commendable. It is undeniable that NASUCA has furthered a constructive dialogue on the questions of how much regulatory intervention is necessary to provide an adequate level of consumer protection in today's competitive environment and which entities should set and enforce any necessary standards and guidelines.² While not proposing an optimal solution to the concerns raised within, NASUCA's Petition has, at a minimum, highlighted important issues to be vetted by policymakers.

¹ Evidence has not yet been presented to establish that there exists an epidemic of improper telecommunications carrier surcharges that violate (i) the FCC TIB Order's requirement that bills "contain full and non-misleading descriptions of the charges that appear therein," (ii) the FCC guidelines regarding standardized billing labels, or (iii) the FCC Contribution Order regarding characterization of "administrative and other costs as regulatory fees.

² Due to the increasing options available to the consumer and to differences in methods by which carriers recover their costs of doing business, some consumers have posed questions and made complaints to state and federal regulatory agencies regarding charges on their telecommunications bills. NASUCA's petition is illustrative of the fundamental tension between, on the one hand, carriers providing detailed line-item descriptions of their charges and, on the other hand, carriers providing detailed information on only certain charges.

Despite good intentions, NASUCA's approach is flawed. First, the requested relief would *carte blanche* reject the clear policy choice for more, not less, specificity on customers' bills. Second, targeted enforcement of existing rules ought to be considered prior to wholesale reform of the Truth-In-Billing regime – a regime upon which service providers have relied in developing their billing formats and practices. Third, self-policing mechanisms, like the Voluntary Consumer Code in the wireless industry, ought to be afforded a reasonable opportunity to operate prior to an additional and costly layer of regulation being imposed on competitive industry sectors.

While further exploration by the FCC and by Congress of the broader issue of the appropriate balance of federal and state jurisdiction over inherently interstate services is meritorious, we respectfully submit that, at this time and on the record before it, the FCC should deny the NASUCA Petition for Declaratory Ruling³ for the reasons discussed herein.

B. THE REQUESTED RELIEF WOULD RESULT IN CONSUMERS HAVING LESS INFORMATION REGARDING WHAT THEY ARE BEING BILLED

Since the FCC's 1999 adoption of its truth-in-billing principles, the clear policy choice has been for greater specificity and more detailed information to be included on customer bills.⁴

The NASUCA Petition runs counter to this public policy. NASUCA proposes that carriers be prohibited from imposing monthly line items and surcharges on bills unless the charges have been expressly mandated or authorized by governmental action and “closely match” the regulatory assessment they are designed to recover. NASUCA, perhaps inadvertently, is encouraging substantially less disclosure on customer bills. For example, a lawful charge related to a government mandate but that is not itself “mandated” might no longer properly be specifically line-itemed on a customer's bill. Mandated charges could be disclosed, while related but not mandated costs might not be. The relief requested by NASUCA would also make line item disclosures much more difficult – and costly – by requiring express government “preauthorization.”

Historically, policy makers have been concerned that certain government related costs were embedded in customers' bills. Government mandates and regulatory activities unquestionably impose direct and indirect costs on communications providers. Most agree that providers are entitled to recover such direct and indirect costs. Indeed, many providers impose separate monthly surcharges and fees that may result, directly or indirectly, from government mandates and regulatory activities.

³ Some commentators raised questions as to the propriety of the form of NASUCA's Petition, given the purpose of a declaratory ruling as described in 47 C.F.R. §1.2 and the scope of NASUCA's request.

⁴ In the 1996 Telecommunications Act, Congress similarly articulated a preference, for example, that universal service funding mechanisms be express and not hidden.

In 1999, after extensive input from states and consumer groups, the FCC adopted “truth-in-billing” (TIB) principles and guidelines that *permitted* but in some cases *did not require* companies to identify operating/administrative costs relating to items such as local number portability. In the TIB Order, the FCC enacted broad guidelines, implementing three basic principles, namely that consumers should know: (1) who is asking them to pay for service, (2) what services they are being asked to pay for, and (3) where they can call to get more information about the charges appearing on their bill. Further, the FCC stated that the broad principles underlying the rules adopted to promote truth-in-billing apply to all telecommunications carriers, both wireline and wireless.⁵ In a nutshell, *the FCC’s TIB Order requires that carrier bills contain full and non-misleading descriptions of charges that appear therein.*⁶

Since the TIB Order, providers have made substantial (and likely costly) revisions to consumer billing formats to reflect specific line-item charges, to identify how customers are billed for various services and fees, and to separate out embedded costs and fees. Additionally, various providers have been providing detailed billing and initiating other consumer-friendly practices, such as “frequently asked questions” sections on their websites, to better assist consumers in understanding charges on their bills and making informed decisions.

As a general regulatory principle, participants in a competitive marketplace should have the flexibility to recover costs and fees from their customers, *provided that such cost recovery does not violate any applicable law*. Requiring service providers (especially those in a competitive industry) to obtain an express mandate or “preauthorization” by a governmental entity to identify certain charges as line items on customer bills is an exercise that would result in substantial, additional regulatory and transaction costs that would certainly be passed on to consumers, directly or indirectly.

We respectfully submit that consumers should have access to more detailed information in order to make more informed choices about the services for which they are paying – a principle that supports specifically delineating costs on a consumer’s bill and disclosing the nature of those costs.⁷ *If a customer is going to be charged \$1.95 for something, the customer*

⁵ Noting that the record did not reflect the same volume of complaints in the wireless context or that wireless billing practices fail to provide consumers with the clear and non-misleading information needed to make informed choices, the FCC only imposed the following requirements on wireless carriers: (i) inclusion of the name of the service provider and a contact number on the bill, and (ii) uniform labeling of federal charges (if and when such requirements are adopted).

⁶ Notably, there does not appear to be competent, substantial record evidence demonstrating that providers’ practices of billing specifically-delineated monthly surcharges and fees thwarts either the pro-competition goals set forth in federal telecommunications laws.

⁷ Consistent with this principle, many wireline and wireless carriers have been providing detailed billing information and initiating other consumer-friendly practices, such as “Frequently Asked Questions” sections on their websites, to better assist consumers in making informed decisions. As but one example of an effective voluntary

ought to have a right to know what that something is, whether it be a mandated charge, related to a mandated charge, or another discretionary but lawful charge being assessed by the provider. Specific disclosure of costs and fees to consumers, whether through line items or surcharges, provides consumers with more information about what they are actually paying than would mandatory bundling of certain costs into some general flat fee.⁸ Provided that descriptions of line items and surcharges comply with existing TIB requirements, consumers can compare the various carrier line items and surcharges in the same manner that they compare rate plans⁹ and subsequently make informed choices.

As such, reverting to a policy that would result in less disclosure to consumers is misguided.

C. COMPREHENSIVE RULES AND ENFORCEMENT AVENUES EXIST – TARGET THE BAD ACTORS

Public policy should strive to protect consumers from unscrupulous service providers, including in highly competitive segments of the industry. The remedy proposed by NASUCA, however, would serve to burden all carriers for the allegedly improper actions of a few. A better approach would be for the FCC to take aggressive enforcement action, on a case-by-case basis, against those specific carriers that may have violated existing consumer protection laws and regulations related to billing.

Numerous meaningful avenues exist for the resolution of customer billing disputes. First, the FCC has the jurisdiction to enforce the TIB rules. Second, the Federal Trade Commission (FTC) also has enforcement authority to address claims of fraudulent billing. Third, state public utility commissions have concurrent jurisdiction over the billing practices of companies subject to their jurisdiction. Fourth, most (if not all) states Attorney General Offices have broad jurisdiction to enforce state deceptive billing practices laws. In fact, 32 State Attorneys General have already signed onto an Assurance of Voluntary Compliance with several national wireless carriers that specifically address the billing issues NASUCA is purportedly trying to resolve. If these existing remedies are deemed insufficient to address a billing problem, there are existing avenues available to consumers and the states.

solution to properly inform customers of charges on their bills, see the “Understanding Your Bill” section of Cingular Wireless’ website at: http://www.cingular.com/customer_service/bill_totalSummary.

⁸ More detailed disclosure provides consumers more information not only about what they are being billed for but also governmental promotion of certain policies.

⁹ Regardless of whether currently separated line items and surcharges are rolled into carriers’ rate plans, rate plans of different carriers will not lend themselves to “apples-to-apples” comparisons due to the plethora of combinations of services that may be contained within a rate plan. Though more difficult to make “apples-to-apples” comparisons in this competitive arena, the vast assortment of services contained within rate plans is driven by consumer demand and is certainly a benefit to consumers.

Specifically, the FCC has broad jurisdiction over the billing issues and has clear authority to take enforcement action against those carriers that are in violation of any of the following rules and regulations:

- Section 201 and 202 of the Communications Act of 1934;
- The FCC Truth-In-Billing Order's requirement that carrier bills "contain full and non misleading descriptions of the charges that appear therein;"
- The FCC guidelines regarding standardized billing labels;
- The FCC Contribution Order, which permits new line items and surcharges with some limitations;
- Other federal laws, rules, or orders of the FCC pertaining to telecommunications billing;

Indeed, the FCC stated in its 1999 TIB Order that it would "*not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges.*"¹⁰ In addition, pursuant to Section 208 of the Communications Act, states themselves can bring a complaint to the FCC. Thus, there are numerous remedies that currently exist to address and resolve improper billing practices. Adding another layer of regulation, for which consumers will ultimately bear the costs, is unnecessary, unwarranted and counter to the consumers' interest.

While state and federal regulators must remain vigilant in policing improper billing practices, the proposition that any such improper practices cannot be adequately remedied in one of the existing federal or state forums has not been established by any competent and substantial record evidence. Whether enforcement of existing federal and state legal requirements, as opposed to new legal requirements, does or could adequately address alleged improper billing practices, is an important determination that should be made *prior to any wholesale reform of billing requirements*.

As a condition precedent to granting the relief sought in the instant petition, we respectfully suggest that enforcement should be sought against those specific carriers that have violated applicable law. There will likely always be, in every sector of the economy, a few bad actors that choose to disregard the law. There are indeed communications providers who have engaged in cramming, slamming, and other improper practices. Companies that *intend* to deceptively bill their customers will likely always seek to circumvent the applicable law, and we

¹⁰ *Truth-in-Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, ¶58.

encourage the FCC, the FTC, members of NASUCA and other bodies to pursue swift and decisive enforcement against these bad actors.

We respectfully suggest, however, that the FCC and state regulators need to thoroughly assess the extent to which current consumer protection laws do not or could not address improper behavior before creating yet another layer of regulations.

D. VOLUNTARY EFFORTS LIKE THE WIRELESS CONSUMER CODE SHOULD BE GIVEN AN OPPORTUNITY TO WORK

The NASUCA Petition proposes that additional mandates be imposed on highly competitive segments of the communications industry, including the wireless industry, a “poster child” for the benefits of competitive markets.

That the wireless industry is intensely competitive cannot be credibly denied. Some 98% of Americans can choose from at least 3 wireless providers, and 83% have a choice of 5 or more wireless providers.¹¹ As a result of this competition, prices have continually declined (in 1993 the average wireless bill was \$61.49, as compared to the 2003 average bill which was \$38.73).¹² At the same time, wireless voice, video, and data service offerings continue to proliferate.

Despite declining per minute prices, the wireless industry continues to invest heavily in its network and in innovative new products and services. For example, wireless carriers invested over \$19 billion in 2003 alone, including a 17% increase in cell sites in service. Consumers have seemingly endless choices among innovative technologies, rate plans, packages, billing options, etc. For example, carriers such as Virgin and Verizon have “pay as you go” plans. Innovation, investment, and consumer choice are foundational benefits of the fierce competition among wireless carriers and are not being delivered by regulatory mandates.

In self-policing initiatives such as CTIA’s Voluntary Consumer Code, *wireless carriers have demonstrated a realization that consumer satisfaction is critical even in a highly competitive market.* The Code is designed to encourage greater wireless carrier communication and disclosure to consumers on a voluntary basis. According to the CTIA website, *33 carriers, including all of the national carriers, have adopted the Code.*¹³

¹¹ “Innovation: The Keystone of the Commercial Mobile Wireless Experience.” Cellular Telecommunications & Internet Association (CTIA) Presentation to FCC. April 2004.
<http://files.ctia.org/pdf/CMRSINNOVATIONmar04.pdf>.

¹² “The Wireless Industry and Its Contributions.” Cellular Telecommunications & Internet Association (CTIA) Presentation to FCC Wireline Competition Bureau. September 2004.
http://files.ctia.org/ppt/WCB_Wireless_Contributions_Presentation.ppt.

¹³ For the complete list of the 33 wireless carriers that have adopted the CTIA Consumer Code, please see:
http://www.ctia.org/wireless_consumers/consumer_code/index.cfm.

Among others, the Code contains two provisions that appear highly relevant to the concerns raised by NASUCA. Commitment One requires that those carriers that have adopted the Code “Disclose Rates and Terms of Service to Consumers,” to include disclosure of “the amount or range of any . . . fees or surcharges that are collected and retained by the carrier.”¹⁴ Additionally, Commitment Six requires adopting carriers to “Separately Identify Carrier Charges From Taxes On Billing Statements.”

With respect to the wireless industry specifically, the CTIA Consumer Code should be afforded a reasonable period of time to work¹⁵ toward addressing the line item and surcharge concerns raised by NASUCA before yet another layer of costly regulatory requirements are simply applied across the universe of providers. The CTIA Consumer Code is the very type of response that policy makers ought to encourage from participants in a competitive market. *To simply disregard self-policing initiatives such as this would be a certain deterrent to future industry efforts to voluntarily address customer related issues within their industry.*

If upon review, however, the FCC finds that current carrier practices justify new requirements for the wireless industry as a whole, such requirements should mirror Commitments One and Six of the Code. As some 33 carriers have already adopted the Code, the costs of implementing similar requirements on an industry-wide basis would presumably not be prohibitive (for the providers and, ultimately, for the consumers of wireless services).

E. CONSUMERS ARE BEST SERVED BY A NATIONAL “BILLING” POLICY

NASUCA is to be commended for calling for a national approach to billing issues pertaining to IXC and wireless firms. The concerns raised in NASUCA's Petition have been presented in the most appropriate arena – the federal arena. A national approach is justified with respect to the billing practices of interstate carriers, including IXCs and wireless carriers.

A patchwork of state and local billing guidelines that make it more difficult and more costly (ultimately for customers) for national providers to effectively serve multi-state territories would not be appropriate. We, thus, respectfully suggest that the FCC occupy the field and take a truly national approach in resolving this issue.

The issue of preemption is, admittedly, a hotbed issue. Our endorsement of a national approach for billing purposes is just that – a call for a uniform approach that sets forth, to the extent necessary, appropriate national billing standards and guidelines for at least the IXC and wireless (*i.e.*, the purely interstate) segments of the industry. Our endorsement of a national billing regime should not be construed as a broad endorsement of federal preemption of all communications related issues. That is a debate for Congress, and the FCC as may be the case, to have in a broader context.

¹⁴ CTIA Consumer Code, at http://files.ctia.org/pdf/The_Code.pdf.

¹⁵ The Voluntary Consumer Code was adopted in September 2003.

Further, our endorsement of a truly national billing regime should not be viewed as an argument that generally applicable state consumer protection, fraud and deceptive business practice laws should not apply. Such laws should continue to apply and communications carriers, like all other “interstate” companies doing businesses in the various states, should remain subject to generally applicable consumer protection laws.

The states and the federal government share an interest in ensuring that consumers are not defrauded. What is needed, however, is a truly uniform approach to the wireless billing practices that would apply to all customers of interstate communications services. The resulting national framework should consist of federal rules that apply with equal force to providers offering service to a customer in California or one in New York or one in Idaho.

Reform just of the federal billing regime would likely result in certain additional transaction costs, as firms comply with any new rules. An additional patchwork of various state billing guidelines would likely result in *additional costs*. Consider the following: (a) 10 of the 50 states in the national wireless market each have good (but different) ideas for reforming the billing regime for wireless carriers doing business in their state and (b) each of those 10 good approaches would cost on average \$2M for the providers to comply. This additional level of state regulation would have resulted in \$20M in additional regulatory costs that will, in a competitive market, be socialized amongst the customers of the services. Consumers certainly lose in this scenario.

A national billing regime is also necessary to avoid potentially conflicting, albeit well-intended, state regulations. The recent California Bill of Rights experiment went so far as to dictate the font size providers were to use. Imagine Florida requiring a font size of Times Roman 12 but New York requiring Arial 11. As a more substantive example, imagine Maryland permitting the disclosure of a certain fee pursuant to state authority but Texas prohibiting such disclosure. The very real potential for conflicting state regulations, and the impact (financial and otherwise) of complying with a patchwork of rules does not serve the consumers’ interest. *Regulators may feel good about having addressed an issue – but consumers don’t necessarily win when multiple jurisdictions, with the best of intentions, impose additional regulatory hurdles that ultimately cost consumers.*

All of this is not to say that there is no meaningful role for the states. To the contrary, states will play key roles. First, states should play a key role in articulating to Congress or the FCC what are the key consumer protection issues that could or should be nationalized. If California’s view of the proper font size for a contract makes sense, then let’s nationalize that notion, so that all providers know they should produce contracts in Times Roman 12. Second, states should play a critical role in enforcing national consumer protection rules. Third, states will continue to enforce their generally applicable consumer protection and fraud rules.

F. CONCLUSION

For the reasons set forth above, we respectfully suggest that the FCC deny NASUCA's petition. Though well intended, granting the relief requested would not be in the best interests of the nation's consumers. If granted, consumers would likely receive less information about what they are being charged, and they would likely face higher costs as carriers are forced to jump through additional costly and unnecessary regulatory hoops. At this stage, record evidence does not demonstrate that providers' practices of recovering and fees costs through specifically-delineated monthly line-item surcharges thwarts either the pro-competition goals set forth in federal telecommunications laws or the FCC's TIB Order's requirement that carrier bills contain full and non-misleading descriptions of charges that appear therein.

* * *

Dated: March 3, 2005

Respectfully submitted,*

ELIA GERMANI, CHAIRMAN
Rhode Island Public Utility Commission

ROBERT K. SAHR, VICE-CHAIRMAN
South Dakota Public Service Commission

ELLEN C. WILLIAMS, VICE CHAIRMAN
Kentucky Public Service Commission

RANDY BYNUM, COMMISSIONER
Arkansas Public Service Commission

JAMES CONNELLY, COMMISSIONER
Massachusetts Dept. of Telecommunications & Energy

KEVIN CRAMER, COMMISSIONER
North Dakota Public Service Commission

* The comments herein represent, collectively, those of the individual signatories to the comments and do not necessarily represent the positions of either the public utility commissions on which the signatories serve or the states in which the signatories serve.

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
March 3, 2005
Page 10 of 10

CHARLES M. DAVIDSON, COMMISSIONER
Florida Public Service Commission

SUSAN P. KENNEDY, COMMISSIONER
California Public Utility Commission

CONNIE MURRAY, COMMISSIONER
Missouri Public Service Commission

ANTHONY RACHAL, COMMISSIONER
District of Columbia Public Service Commission